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for Roanoke  
NOV 01 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

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MAURILIO PRIETO-RUBI,  
Petitioner,  
v.  
UNITED STATES OF AMERICA,  
Respondent.

) Civil Action No. 7:07cv00412  
)  
) MEMORANDUM OPINION  
)  
) By: Hon. Norman K. Moon  
) United States District Judge

Petitioner, Maurilio Prieto-Rubi, filed this Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. In his motion, Prieto-Rubi claims that counsel was ineffective in failing to file an appeal upon request. Respondent filed a motion to grant petitioner's motion.

Along with its motion, the government has submitted an affidavit from Prieto-Rubi's attorney which suggests that Prieto-Rubi did not ask him to file an appeal. However, the government recognizes that a genuine issue of material fact exists and, thus, that the claim could not be resolved without an evidentiary hearing. Rather than hold an evidentiary hearing, the government requests that in the interest of judicial economy, the court grant Prieto-Rubi's § 2255 motion.

Accordingly, the court will grant Prieto-Rubi's § 2255 motion, vacate the original Judgment in his criminal case, and enter a new Judgment from which an appeal can be taken. See United States v. Peak, 992 F.2d 39, 42 (4th Cir. 1993).

The Clerk of the Court is directed to send a certified copy of this Order and accompanying Memorandum Opinion to the petitioner.

ENTER: This 1st day of November, 2007.

Norman K. Moon  
United States District Judge